

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL WAYNE FLEMING,

Plaintiff,

v.

OFFICER J. REED, et al.,

Defendant.

NO. EDCV 16-684-PSG (AGR)

ORDER OF DISMISSAL

In this prisoner civil rights case, on April 21, 2020, Defendants filed a Notice of Death of Plaintiff. (Dkt. No. 104.) Plaintiff's *Bivens* civil rights claims are not necessarily extinguished by Plaintiff's death in whole or in part.

The court must dismiss the lawsuit if a motion for substitution is not made by any party or by the decedent's successor or representative within 90 days after service of a statement noting the death. Fed. R. Civ. P. 25(a)(1). Rule 25(a)(1) "requires two affirmative steps in order to trigger the running of the 90 day period." *Barlow v. Ground*, 39 F.3d 231, 233 (9th Cir. 1994). "First, a party must formally suggest the death of the party upon the record." *Id.* That requirement is satisfied by the Defendants' filing of the Notice of Death. *Moss v. Entzel*, 2020 U.S. Dist. LEXIS 27294, *7 (C.D. Cal. Feb. 13, 2020). "Second, the suggesting party must serve other parties and nonparty successors or representatives of the deceased with a suggestion of death in the same manner as required for service of the motion to substitute." *Barlow*, 39 F.3d at 233. "[N]onparty successors or representatives of the deceased party must be served the suggestion of death in the manner provided by Rule 4 for the service of a summons." *Id.*; see *Moss*,

1 2020 U.S. Dist. LEXIS 27294, *7 (proofs of service upon identified family members).

2 The court ordered Defendants to serve the Notice of Death of Plaintiff upon any
3 identified family members, successors or representatives of Plaintiff. (Order dated April
4 22, 2020, Dkt. No. 105.) Defendants filed a Status Report Re Service of Notice of Death
5 of Plaintiff and proofs of service. (Dkt. No. 109.) Defendants served the Notice upon
6 Plaintiff's wife, three sons and one daughter. The date of the last service was June 25,
7 2020. (Dkt. No. 109 at 1; Dkt. No. 109-1.) No one has filed a motion for substitution
8 within 90 days after service as required by Rule 25.

9 Accordingly, IT IS ORDERED that this action is dismissed.

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11 DATED: 10/7/2020



PHILIP S. GUTIERREZ
Chief United States District Judge